(1) Single Bench (3)

IN THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR (C.G.).

WRIT PETITION No. 4921/2004.

PETITIONER PLAINTIFF : Gokul S/o Tilochan Mahar, aged about 56 years, R/o Village- Khapari, P.O. Barbaspur, Patwari Halka No.- 38, R.I.C. & Tahsil Gunderdehi, District- Durg (C.G.).

VERSUS

RESPONDENTS DEFENDANTS :

1. Rajwantin Bai W/o Punuram Baya, Aged about 55 years, R/o. Village- Mokha, P.O.- Rajoli, Tahsil- Gunderdehi, District Durg (C.G.).
2. (a) Yadavram Gangeswar S/o Romnath, Aged about 40 years, Resident of Vidhansabha Office Raipur (C.G.).
   (b) Domanlal Gangeshwar S/o Romnath, Aged about 37 years, Present Address Sahayak Vikas Vistar Adhikari, Baghbahara, Post office Baghbahara, District Mahasamuand (C.G.).
   (c) Smt. Arti W/o Amarchand, Rampuriya "Amar Sadan" Near Ganga Bhawan, Behind Water Tank Sikaripara, Balod, District Durg (C.G.).
3. Bhokluram Chandradev S/o Punuram, caste-Mahar, Age 32 yers, R/o. Village Mokha, P.O. Rajoli, Tahsil-Gunderdehi, District Durg (C.G.).
4. Bhagwat S/o Jainu Mahar, Age- yrs., 'Kotwar', R/o. Village- Khuteri, P.O. & Tah. Gunderdehi, Distt. Durg (C.G.).
5. State of Madhya Pradesh Now State of Chhattisgarh, Through : Collector, District Durg (C.G.).

P.R. No. 4930/04
Presented by Shri Amitabh Yadav
dated 17.12.04

TECH. COPY
Clerk to A. G. Bilaspur
17/12/04

शपथ आयुक्त
17/12/04

WRIT PETITION UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA

Sanjay

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

W.P. No. 4921/2004

मामला क्रमांक ..... **सन्** **200**

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

15.3.2005

Petitioner by Shri Santosh Yadu, Advocate.

Shri Ajay Shrivastava, counsel for the Respondents No. 1 to 4.

P. S. Koshy, Deputy Advocate General takes notice on behalf of the Respondent No.5/State.

Learned counsel for the parties are ready for final disposal of this mater, as learned counsel for the respondents submits that he does not want to file any reply on behalf of the respondents and he wants to argue the matter for final disposal as the proceedings of the trial Court is stayed on account of filing of this writ petition.

Heard.

The petitioner has filed this writ petition being aggrieved by the order passed by the 4th Civil Judge Class-II, Durg dated 2.12.2004 whereby learned court below has rejected the application filed by the plaintiff/petitioner under order 18 Rules 17 of the C.P.C. on the ground that the application has been filed just to delay the proceedings of the suit.

The brief facts leading to filing of this writ petition are that the petitioner herein who is plaintiff before the civil Court filed a suit for declaration and permanent injunction in respect of the agricultural land mentioned in the plaint. The written statement has already been filed, issues have been framed and thereafter both the parties have adduced their evidence and now the matter is fixed for final hearing.

An application under order 13 Rule 10 of the C.P.C. was filed on behalf of the petitioner/plaintiff for summoning the record of the

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आदेश पत्रक

मामला क्रमांक WP/4921/07 **सन्** **200**

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Revenue Case No. 643-A/6, 1997-98 order dated 30.9.98 and Revenue Case No. 3-A/27, 1998-99 order dated 8.1.1999. Said application was rejected by the trial Court vide order dated 25.11.2003 observing therein that there is no need to call the records as the plaintiff could have produced the certified copy of the orders, instead of calling of the records of the cases. It appears after this order the petitioner/plaintiff moved an application under order 7 rule 14(3) and the same was allowed by the trial Court vide order dated 30.9.2004 the documents have been placed on record. Thereafter the plaintiff herein moved an application under Order 18 Rule 17 praying therein that the petitioner/plaintiff wants to recall him so as to tender these documents into evidence. That application has been rejected by the trial Court by the impugned order dated 2.12.2004.

Learned counsel for the petitioner argued that since these documents are important for just decision of the case. Therefore, it is necessary for the petitioner to tender these documents into the evidence, therefore, the trial Court ought to have recalled the petitioner/plaintiff for tendering these documents into evidence and marking of exhibits, which were permitted to be taken on record vide order dated 30.9.2004, as that situation arose only after the examination of the plaintiff was over.

On the other hand learned counsel for the respondents opposed the prayer made by the petitioner and argued that the prayer made by the petitioner was not covered under Order 18 Rule 17 of the C.P.C. and he further submitted that as far as the tendering

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..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

of these documents into evidence is concerned, counsel for the respondents is ready to admit the existence of these documents subject to legal objections and in this given situation the petitioner's examination becomes redundant and unnecessary and in this way these documents may be tendered into the evidence.

Having heard learned counsel for the parties and having regard to the facts and circumstances of the case, the arguments advanced by learned counsel for the respondents appears to be just, fair and proper. Therefore, this petition is allowed and the trial Court is directed to allow the counsel for the respondents/defendants for admission or denial, for which learned counsel for the respondents has submitted that he would admit the existence of the documents subject to legal objections; these documents can be marked and considered in accordance with law and thereafter final arguments may be heard and the case may be disposed of.

Certified copy as per Rules.

Sd/-
L.C.BHADOO
Judge

(पीछे देखिये)